

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Developing a Unified Intercarrier |) | CC Docket No. 01-92 |
| Compensation Regime |) | |
| |) | |

REPLY COMMENTS OF THE NEBRASKA PUBLIC SERVICE COMMISSION

I. Introduction

The Nebraska Public Service Commission (NPSC) hereby submits these reply comments in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) adopted on February 10, 2005 and released on March 3, 2005.¹ The NPSC appreciates the opportunity to offer comments on the issues raised by the Commission. The NPSC continues to believe the Commission should develop a unified compensation regime. As a core philosophy, the Commission should endorse the NARUC principles. The NPSC supports the efforts of NARUC to develop data and metrics sufficient to evaluate the impact on the industry and end-users with respect to the reform plans being considered. All users of the public switched telephone network (PSTN) should compensate the owners of the network. The Commission should ensure the sustainability of federal and state universal service fund programs. The NPSC agrees with the number of commenters who oppose a mandatory bill and keep regime.

¹ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92 (rel. March 3, 2005) ("FNPRM").

II. A Unified Regime is Critical to Principles of Fairness and Competitive Neutrality

The NPSC continues to believe that any mechanism adopted by the Commission should be economically efficient and competitively and technologically neutral. The established rates should not discriminate among carriers based on carrier classification, the classification of requesting carrier's customers, the location of the requesting carrier's customer, the geographic location of any of the end-users who are parties to the communication, or the architecture or protocols of the requested carrier's network or equipment. However, the rates should recognize the differences between rural and nonrural markets. Carriers should be allowed to recover a reasonable return on their investment and thereby continue to meet service quality objectives. The plan should require sufficient labeling of traffic to address phantom traffic concerns and avoid discrimination. The NPSC supports the NARUC Intercarrier Compensation Task Force proposal which includes compensation for originating traffic as well as terminating traffic.

III. The Commission should adopt the NARUC principles as a framework.

The NPSC continues to support the efforts of the NARUC and the principles it outlined earlier in this proceeding. In its initial comments the NPSC recommended the Commission adopt the principles as a baseline and recommended

the Commission compare the various plans to the principles. The NPSC continues to believe this is the best approach. The NPSC agrees with the comments submitted by NARUC's general counsel that the ICF, the Western Wireless proposal and the CTIA principles as proposed do not appear to square with NARUC's principles as they eliminate the states' role and mandate a bill and keep arrangement.²

In addition to the principles outlined previously, the NARUC Intercarrier Compensation Task Force has been working collaboratively with states and carriers willing to participate in an ongoing effort to reach consensus on other key issues.³ The NPSC supports the efforts of NARUC to develop data and metrics sufficient to evaluate the impact on the industry and end-users with respect to the reform plans being considered. The Commission should give consideration to the continuing discussions and the evolving proposals resulting from the NARUC process.

A. State Authority over Intrastate Issues should be Preserved

The NPSC continues to believe that a state role should be preserved. As stated in the NARUC principles "state commissions should continue to have a significant state role in establishing rates and protecting and communicating with consumers."⁴ In particular, the Commission should allow states to continue to set intrastate access rates and should preserve state universal service mechanisms. A

² See Initial Comments of the National Association of Regulatory Utility Commissioners ("NARUC") at 3.

³ See *id.* at 4.

⁴ NARUC Principles at 7, section VI. Appropriate Federalism part B.

number of commenters including NARUC argue that the FCC can not and should not preempt authority over intrastate access charges.⁵ The NPSC agrees with these commenters. Over the last six years the NPSC has worked with all local exchange carriers receiving state universal service support to remove implicit subsidies from intrastate access rates.⁶ Because states are familiar with carriers' overall cost structure, network architecture and investments, states are in the best position to determine whether access rates are close to cost. State authority in this area should be preserved to ensure an appropriate balance is struck.

Likewise, the NPSC recommends the Commission give deference to state universal service mechanisms. Incumbent carriers rely on state universal service mechanisms to make investments in rural areas where it otherwise would be cost prohibitive.

B. The Commission should not mandate bill and keep

Carriers should be free to negotiate bill and keep arrangements on a voluntary basis. But bill and keep should not be mandated for all carriers. First, it is unclear whether the Commission may mandate bill and keep. The NPSC agrees with the comments submitted by the Ohio Public Utilities Commission that although Section 252(d)(B)(i) of the Telecommunications Act (the Act) does not prohibit voluntary bill and keep arrangements, the Act only allows for bill and keep

⁵ See NARUC at 4; Comments of the Public Utilities Commission of Ohio ("PUCO Comments") at 2.

⁶ See generally Application No. C-1628/NUSF *In the Matter of the Commission, on its own motion, seeking to conduct an investigation into intrastate access charge reform and intrastate universal service fund.*

where a mutual agreement occurs.⁷ The Commission asked whether it should use its section 10 authority to forbear from certain aspects of the compensation requirement of section 251(b)(5) as part of the reform effort to require bill and keep.⁸ The NPSC agrees with the Rural Alliance comments that the Commission should not exercise forbearance in this fashion.⁹ In addition, the NPSC agrees that there are other compelling reasons not to mandate a bill and keep regime. First, a mandatory bill and keep regime would not eliminate gaming.¹⁰ Further, the NPSC does not believe a mandatory bill and keep regime would fairly compensate all providers especially where the exchange of traffic is not balanced between carriers.

C. Implementation Issues

The Commission and state commissions should work jointly to develop a sensible compensation mechanism. Once a plan is adopted, the Commission should refer implementation of the plan to the Joint Board. The Act preserves an important role to the Joint Board and the Commission should direct the Joint Board to study and resolve issues as they arise.

VI. Conclusion

⁷ See PUCO Comments at 18. See also Comments of the Rural Alliance at 25.

⁸ See *NPRM*, ¶¶ 74-77.

⁹ See Comments of the Rural Alliance at 28.

¹⁰ See PUCO Comments at 18.

The NPSC applauds the Commission for taking an aggressive approach to reform the current intercarrier compensation mechanism. NARUC's principles are supported by the NPSC and should be adopted by the Commission as a framework by which to measure specific plans. The Commission should not adopt a mandatory bill and keep plan. The Commission should preserve existing state roles to bring about a balanced approach.

Dated this 20th day of July, 2005.

Respectfully Submitted,

Nebraska Public Service Commission

/s/ Shana Knutson

300 The Atrium Building
1200 N Street
Lincoln, Nebraska 68508
(402)471-3101